

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA

GURBACHAN SINGH SANDHU	)	AB-7280
dba Red Hill Liquor)	
8939 Foothill Blvd.	)	File: 21-212058
Rancho Cucamonga, CA 91730,	)	Reg: 97042009
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Sonny Lo
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	April 6, 2000
	)	Los Angeles, CA

Gurbachan Singh Sandhu, doing business as Red Hill Liquor (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked his license for his clerk, Parveen K. Gahlawat, having sold an alcoholic beverage to a minor; for another clerk, Mark Sandhu, having failed properly to document the sale of a keg of beer; and for his employee, Joe Sandhu, having attempted to purchase stolen cigarettes, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §25658, subdivision (a), and Penal Code §§664 and 496.

¹The decision of the Department, dated November 5, 1998, is set forth in the appendix.

Appearances on appeal include appellant Gurbachan Singh Sandhu, appearing through his counsel, Joshua Kaplan, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on February 8, 1988. Thereafter, the Department instituted an accusation against appellant charging that appellant's clerk sold alcoholic beverages to each of two minors, that another clerk, Mark Sandhu, failed properly to document a keg sale, that still another employee, Joe Sandhu,² attempted to purchase stolen cigarettes, and that appellant was not the true owner of the business.

An administrative hearing was held on September 15 and 16, 1998, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which sustained one of the sale-to-minor charges, the attempted purchase of stolen cigarettes, and the keg registration charge, dismissed the claim of false ownership, and ordered appellant's license revoked.

Appellant thereafter filed a timely appeal, and now raises the following issues: (1) the clerk reasonably relied upon false identification; (2) there was no nexus between the purchase of the cigarettes and the sale of alcoholic beverages; (3) the Department failed to prove the keg had a capacity in excess of six gallons; (4) the

² Joe Sandhu is appellant's brother, and, at one time or another has claimed variously to be an employee of the business, its controller, and even its owner. The ALJ made a specific finding in this case that he was not an owner of the business.

penalty constitutes cruel and unusual punishment; and (5) appellant was denied due process by virtue of the unconstitutionality of Business and Professions Code §24210.³

DISCUSSION

I

Appellant does not contest the fact that the minor, Daymon Yamashita, purchased alcoholic beverages on the day in question, but asserts Business and Professions Code §25660 as a defense, claiming that Yamashita presented false identification - a California driver's license - upon which the clerk reasonably relied.⁴

This defense lacks merit. There is insufficient evidence of reasonable reliance, assuming, as appellant contends, identification was displayed.

Section 25660 requires that the identification which is offered in support of the defense be a government-issued document bearing the name, date of birth, description and picture of the person tendering it.

In this case, the license had been issued to one Roberto Morales. The date on

³ Appellant has filed a single brief in support of his appeals in four separate, somewhat related cases. The other three appeals (AB-7410, AB-7411, and AB-7413) involve only the issue of false ownership, and are the subject of a separate decision and order.

⁴ Business and Professions Code §25660 provides:

"Bona fide evidence of majority and identity of the person is a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license or an identification card issued to a member of the Armed Forces, which contains the name, date of birth, description, and picture of the person. Proof that the defendant-licensee, or his employee or agent, demanded, was shown and acted in reliance upon such bona fide evidence in any transaction, employment, use or permission forbidden by Sections 25658, 25663 or 25665 shall be a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon."

which it was to expire had already passed. Morales was described as being 5'10" tall and weighing 130 pounds. Yamashita, 5'7" tall, weighed 200 pounds when he testified, and estimated his weight at 190 pounds on the day in question.

We reject the notion that reliance upon an expired driver's license, issued to a person other than the minor, containing a description which differs materially from that of the person displaying it, can ever be said to be reasonable.

Whether Yamashita was entirely truthful in his testimony, a point appellant disputes vigorously, is irrelevant, since, even assuming that the same license had been presented on earlier occasions, any reliance at those times would have been equally unreasonable.

II

Department investigator Kevin Kenny testified that, on July 9, 1996, he and fellow investigator Brett Musselman visited the Red Hill Liquor premises, met with Joe Sandhu, and offered to sell him cigarettes. Kenny testified that they told Sandhu they obtained the cigarettes by stealing them off docks at a store. After displaying samples to him, the three then moved to Sandhu's office, where he negotiated to purchase cigarettes at \$150 per case, providing them with a writing (Exhibit 16), containing his name and phone number, memorializing his order. At the same time, he purchased one of the cases he had been shown as a sample, containing 30 cartons, for \$150.

Kenny and Musselman returned on August 7, 1996, with a Rider rental truck containing 86 cases of Marlboro cigarettes. After some delay, they met with Joe Sandhu and showed him the contents of the truck, explaining that the Marlboro cigarettes had been an easier brand to steal. The investigators ultimately sold him 80 cases, for \$12,000.

While the cigarettes were being unloaded from the truck and taken into the store, Gurbachan Sandhu arrived. He was observed looking at the contents of the truck, and talking to his brother, but did not say anything to either of the investigators. He was later observed tearing labels off some of the cases.

Against this evidence, appellant contends only that there is a lack of a nexus between the purchase of the cigarettes and the sale of alcoholic beverages, citing the recent case of Santa Ana Food Market, Inc. v. Alcoholic Beverage Control Appeals Board (1999) 76 Cal.App.4th 570 [90 Cal.Rptr.2d 523].

In Santa Ana Food Market, Inc., the court held that the Department had abused its discretion when it suspended the market's license after a clerk, who had taken steps to conceal her actions from the store manager, had made an illegal purchase of food stamps. The court concluded that there was no connection between the clandestine act of the clerk and the sale of alcohol by the store (Santa Ana Food Market, Inc., supra, 76 Cal.App.4th at 576):

"By concluding that the ABC's action in this case was an abuse of discretion, we do not intend to change the basic rules for suspension of licenses or unduly restrict the ABC from exercising its discretion. But where, as here, a licensee's employee commits a single criminal act unrelated to the sale of alcohol, the licensee has taken strong steps to prevent and deter such crime and is unaware of it before the fact, suspension of the license simply has no rational effect on public welfare or public morals."

This case is totally unlike Santa Ana Food Market, Inc. Here, the person who negotiated for, and purchased, cigarettes believed to have been stolen, was not a low-level employee acting surreptitiously to avoid an employer's scrutiny, while acting contrary to company policy. In this case, the principal actor was the brother of appellant and controller of a number of appellant's enterprises. Quite clearly he is at a level of control where his conduct must be imputed to his employer if the Department is to

retain any ability to discipline licensees whose employees act in such a manner as to threaten public welfare and morals.

Indeed, we can only wonder what Joe Sandhu told appellant about the transaction. The purchase of 80 cases of a single brand of cigarettes at a cost of \$12,000 seems to be the kind of business transaction a store owner would be curious about - not an every day transaction, we would think. The Department's decision, however, did not attempt to place direct blame on Gurbachan Sandhu, and, we think, it did not need to do so.

III

Business and Professions Code §25659.5, subdivisions (a) and (b), provide, in part:

"Retail licensees selling keg beer for consumption off licensed premises shall place an identification tag on all kegs of beer at the time of sale and shall require the signing of a receipt for the keg of beer by the purchaser in order to allow kegs to be traced if the contents are used in violation of (law).

"(b) Any licensee selling keg beer for off premise consumption who fails to require the signing of a receipt at the time of sale and fails to place a numbered identification label on the keg shall be subject to disciplinary action pursuant to the Alcoholic Beverage Control Act."

Appellant contends that, absent proof the contents of the keg exceeded six gallons, the statute was not violated, citing subdivision (g) of the same statutory provision which defines a keg as any brewery-sealed, individual container of beer having a liquid capacity of six gallons or more.

Although presented at the trial as Exhibit 14, the keg was remanded to the Department, and is not part of the record transmitted to the Board.

We have the investigator's testimony that he thought the handcart being used to take the keg from the store was inadequate for that purpose, the hearsay statement

that \$65 was paid for the keg, and the investigator's explanation that kegs larger than six gallons had to be registered and logged, from which to determine whether the keg in question was of such capacity as to come within the statute.

Department counsel represented that the keg was labeled "15 gallons," to which the ALJ responded: "I did not see that label, but I saw the keg itself. I know that totals more than six gallons." [RT 76, September 16, 1998.]

We are satisfied that the Department sustained its burden of proof.

IV

Appellant argues that the penalty - revocation - is so disproportionate to the offense as to constitute cruel and unusual punishment.

We do not think it can be said that the penalty is disproportionate to the offense. The sale-to-minor violation was appellant's third within a 36-month period. Business and Professions Code §25658.1 authorizes the Department to revoke a license under such circumstances.

The purchase of property believed to be stolen, a violation of Penal Code §§664 and 496, subdivision (a), was also a basis for revocation, since it involved a crime of moral turpitude. (See Rice v. Alcoholic Beverage Control Appeals Board (1979) 89 Cal.App.3d 30, 37 [152 Cal.Rptr. 285] ("moral turpitude is inherent in crimes involving fraudulent intent, intentional dishonesty for purposes of personal gain or other corrupt purpose."))

Appellant's argument regarding cruel and unusual punishment is simply misplaced in this administrative proceeding.

V

Appellant contends that Business and Professions Code §24210, which

authorizes the Director of the Department to appoint administrative law judges is unconstitutional.

The Alcoholic Beverage Control Appeals Board, along with other administrative bodies, is barred by the California Constitution from holding an Act of the Legislature unconstitutional. (Cal. Const., art. 3, §3.5.) Therefore, the Board declines to consider this contention.

ORDER

The decision of the Department is affirmed.⁵

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁵ This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.